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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,950	01/29/2004	Tony N. Aram	4004-001	1850

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EXAMINER

HOFFMAN, MARY C

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,950

Applicant(s)

ARAM, TONY N.

Examiner

Mary Hoffman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☒ Claim(s) 13-34 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/29/2004
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

Applicant's election of Group II, claims 13-34, in the reply filed on 3/20/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-12 have been cancelled by applicant in the reply filed on 3/20/2006.

Drawings

The drawings are objected to because the numbers are not plain and legible. See attached Form PTO-948. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either

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"Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-18, 21-23, 25-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al. (U.S. Patent No. 4,146,022), cited by applicant.

Johnson et al. disclose a method for stabilizing and facilitating recovery of injured bone within a living body, the method comprising providing a surgical instrument comprising a flexible cable (see FIG. 6, ref. #55) and a plurality of permanent bone-contacting enlargements (ref. #32/#33), the flexible cable having a first end, a second end, and a length sufficient to wrap around the injured bone, the bone-contacting enlargements being fixedly attached to the flexible cable between the first and second ends and being spaced apart from one another to provide linking cable portions alternating with the spaced bone-contacting enlargements; passing the surgical instrument about the injured bone to contact the bone-contacting enlargements and the injured bone with one another, the bone-contacting enlargements positioning the linking

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cable portions in spaced relationship to the injured bone, tensioning the flexible cable about a region of the injured bone to constrict the region while the bone-contacting enlargements retain the linking cable portions in spaced relationship to the injured bone for permitting vascular communication across the constricted region of the injured bone; and securing surgical instrument about the injured bone. The flexible cable is formed of a metal (see col. 4, line 32). The flexible cable is formed of a metal selected from stainless steel and cobalt chrome. The flexible cable (wire) is axially inelastic. The bone-contacting enlargements are obtuse (see ref. #30). The bone-contacting enlargements comprise beads (see ref. #30). The bone-contacting enlargements comprise a metal (see col. 3, line 50). The bone-contacting enlargements have peripheries circumferentially surrounding the flexible cable. The bone-contacting enlargements each have a respective axial length smaller in dimension than respective axial lengths of adjacent ones of the linking cable portions. The method includes providing a connecting device (ref. #40) and securing surgical instrument about the injured bone via the connecting device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-20, 24, 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (U.S. Patent No. 4,146,022) in view of Kipela et al. (U.S. Patent No. 6,595,994) and Kipela et al. (U.S. Patent No. 5,414,658), all cited by applicant.

Johnson et al. disclose the claimed invention except for the bone-contacting enlargements comprising a high molecular weight polymer, specifically polyethylene; a tensioning device; the method further comprising crimping the first end of the flexible cable to a truncated cable portion of the connecting device, and feeding the second end of the flexible cable through a receiving region of the connecting device, and the connecting device comprising a crimpable body portion for receiving and crimping with the first end of the flexible cable; and the connecting device comprising a first screw for securing the first end of the flexible cable to the connecting device, and a second screw for securing the second end of the flexible cable to the connecting device.

Kipela et al. (U.S. Patent No. 6,595,994) disclose using a tensioning device when there is a need to penetrate into small deep wounds and incisions for tensioning cables deeply mounted in the body (col. 1, lines 20-25).

Kipela et al. (U.S. Patent No. 5,414,658) disclose a method for using a connecting device (see FIGS. 1-3) comprising crimping the first end of the flexible cable to a truncated cable portion of the connecting device, and feeding the second end of the flexible cable through a receiving region of the connecting device, and the connecting device comprising a crimpable body portion for receiving and crimping with the first end of the flexible cable; and the connecting device comprising a first screw for securing the

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first end of the flexible cable to the connecting device, and a second screw for securing the second end of the flexible cable to the connecting device which is to be used in lieu of the prior art to provide an essentially foolproof technique of cable securance (col. 1, lines 56-57).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the device of Johnson et al. including the tensioning device in view of Kipela et al. (U.S. Patent No. 6,595,994) when there is a need to penetrate into small deep wounds and incisions for tensioning cables deeply mounted in the body, and to construct the device of Johnson et al. using the method of crimping the first end of the flexible cable to a truncated cable portion of the connecting device, and feeding the second end of the flexible cable through a receiving region of the connecting device, and the connecting device comprising a crimpable body portion for receiving and crimping with the first end of the flexible cable; and the connecting device comprising a first screw for securing the first end of the flexible cable to the connecting device, and a second screw for securing the second end of the flexible cable to the connecting device in view of Kipela et al. (U.S. Patent No. 5,414,658) to provide an essentially foolproof technique of cable securance. It would have further been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Johnson et al. including the bone-contacting enlargements comprising a high molecular weight polymer, specifically polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its

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suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Conclusion

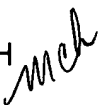
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached Form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MCH



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER